IN THE HIGH COURT OF JUDICATURE AT BOMBAY
O.O.C.J.

WRIT PETITION NO.1010 OF 1993

1. Brij Kishore M.Halwai

2. Shanti Devi Jugal Kishore
Halwai

3. Sanjay Jugal Kishore Halwai

4. Dhananjay Jugal Kishore Halwai

5. Jyoti Jugal Kishore Halwai

6. Saraswati Jugal Kishore Halwai ..Petitioners

All of Bombay, Indian Inhabitants,
residing at 18-19 Yoga Yog
Co-operative Housing Society,
Phirozshah Mehta Road,
Vile Parle (East),
Bombay-400057

v/s.

1. The Municipal Corporation of .. Respondent
Greater Bombay, a Body Corporate
constituted under the provisons of
the Bombay Municipal Corporation ACt,
1888, having its office at Mahapalika
Marg, Fort, Bombay-400 001.

Mr.U.J.Makhija for the petitioners.

Mr. Vinod Mahadik for the respondent.

CORAM : R.M.LODHA AND
J.P.DEVADHAR, JJ.

DATED : 12th August, 2005

ORAL JUDGMENT (Per R.M.Lodha, J.)

Heard Mr.U.J.Makhija, the learned counsel for the petitioners and Mr.Vinod Mahadik, the learned counsel for the respondent.

2. One Matadin Mangali Halwai (since deceased) was

allotted final plot No.164 of Santacruz Town Planning Scheme V, admeasuring 466 sq.yard somewhere in the year 1961. The final plot No.164 came to be allotted in lieu of the plot of land held by him that was covered by the Town Planning Scheme V Mumbai. The possession of final plot No.164 could not be handed over to the late Matadin Mangali Halwai. In lieu of final plot No.164, the late Matadin Mangali Halwai was allotted final plot No.158, admeasuring 429.19 sq.mts. in the year 1973. In his lifetime, Matadin Halwai could not get possession of plot No.158 that was allotted to him. After his death, his legal heirs Brij Kishore Matadin Halwai (the first petitioner) and Jugal Kishore Matadin Halwai pursued the matter with the authorities for possession of final plot No.158. One of the legal heirs Jugal Kishore Matadin Halwai also died and the present petitioner Nos.2 to 6 are his legal representatives. By this writ petition filed by the petitioners who are legal heirs of original allottee Matadin Mangali Halwai, it is prayed that the respondents be directed to hand over vacant and peaceful possession of the final plot No.158 Town Planning Scheme Santacruz-V or in the alternative to hand over vacant and peaceful possession of the final plot No.164 Town Planning Scheme Santacruz (East), Bombay.

3. The respondents do not seem to be contesting the

claim of the petitioners as is seen from the reply affidavit dated 23.4.2002 filed by them. They have stated in the reply affidavit thus-

> ".....These respondents are ready and willing to implement the scheme and hand over the possession of final plot No.158 to the petitioners subject to the plot boundaries being demarcated by City Survey office to identify the plot."

4. The difficulty in handing over possession as reflected from the reply affidavit is two fold. First, the plot is not demarcated by city survey office. The second, the encroachment exists on the said plot.

5. That there has been total laxity and inaction on the part of the respondent in handing over the possession of final plot No.158 to the petitioners is beyond doubt. It was way back in the year 1961 that final plot No.164 was allotted to the predecessor-in-title of the petitioners. He could not get possession of the said plot and in lieu thereof, the respondent allotted final plot No.158 to him somewhere in the year 1973. More than three decades have passed; the original allottee is dead; even one of his legal heirs is dead and petitioners are still trying to get the possession of final plot No.158. By the letter dated 8.4.2002, the respondent asked the city survey officer to demarcate the plot boundaries of final

plot No.158 but no further action has been taken thereafter. The learned counsel for the respondent submitted after seeking instructions from D.S.Shah, Sub-Engineer, H/East Ward who is present in the court that the concerned authority (Ward Officer) would take up the matter with the city survey officer for demarcating the boundaries of final plot No.158 and shall ensure that demarcation of the boundaries of final plot No.158 is done by the city survey officer within three months from today. The learned counsel for the respondent also submitted that no sooner the demarcation of the boundaries of final plot No.158 is done by the city survey officer, the necessary steps for removal of the encroachment over the final plot No.158 shall be taken and that the proceedings for removal of encroachment shall be taken to logical conclusion and completed expeditiously.

6. In view of the statement made by the learned counsel for the respondent, we are satisfied that nothing further is required to be done in the writ petition.

7. We, accordingly, dispose of the writ petition by following order:-

(i) The Ward Officer, H/East Ward shall take up the matter with the city

survey officer immediately for demarcation of the boundaries of final plot No.158 and ensure that the demarcation is done by the city survey officer within three months from today.

(ii) After the demarcation is done by the city survey officer, the respondent and its concerned officers/officials shall take immediate steps for removal of the encroachment and ensure that the proceedings for removal of encroachment are concluded expeditiously and taken to the logical conclusion and possession of the final plot No.158 is handed over to the petitioners.

No costs.

(R.M.LODHA, J.)

(J.P. DEVADHAR, J.)